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6 **BEFORE THE**
7 **BOARD OF REGISTERED NURSING**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2012-295

11 **ARTHUR ROBERT LAVOIE**
12 **7805 Reseda Boulevard, Apt. 207**
13 **Reseda, CA 91335**

DEFAULT DECISION AND ORDER

14 **Registered Nurse License No. 383631**

[Gov. Code, §11520]

15 Respondent.

16 **FINDINGS OF FACT**

17 1. On or about November 1, 2011, Complainant Louise R. Bailey, M.Ed., RN, in her
18 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
19 Consumer Affairs, filed Accusation No. 2012-295 against Arthur Robert Lavoie (Respondent)
20 before the Board of Registered Nursing. (Accusation attached as Exhibit A.)

21 2. On or about March 31, 1985, the Board of Registered Nursing (Board) issued
22 Registered Nurse License No. 383631 to Respondent. The Registered Nurse License expired on
23 April 30, 2011, and has not been renewed. Under Business and Professions Code section 118,
24 subdivision(b), the Board has continuing jurisdiction over this matter.

25 3. On or about November 8, 2011, Respondent was served by Certified and First Class
26 Mail copies of the Accusation No. 2012-295, Statement to Respondent, Notice of Defense,
27 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
28 and 11507.7) at Respondent's address of record which, pursuant to California Code of

1 Regulations, title 16, section 1409.1, is required to be reported and maintained with the Board,
2 which was and is 7805 Reseda Boulevard, Apt. 207, Reseda, CA 91335.

3 4. Service of the Accusation was effective as a matter of law under the provisions of
4 Government Code section 11505, subdivision (c) and/or Business & Professions Code
5 section 124.

6 5. On or about November 22, 2011, the aforementioned documents were returned by the
7 U.S. Postal Service marked "Not deliverable as addressed, unable to forward." The address on
8 the documents was the same as the address on file with the Board. Respondent failed to maintain
9 an updated address with the Board and the Board has made attempts to serve the Respondent at
10 the address on file. Respondent has not made himself available for service and therefore, has not
11 availed himself of his right to file a notice of defense and appear at hearing.

12 6. Government Code section 11506 states, in pertinent part:

13 (c) The respondent shall be entitled to a hearing on the merits if the respondent
14 files a notice of defense, and the notice shall be deemed a specific denial of all parts
15 of the accusation not expressly admitted. Failure to file a notice of defense shall
16 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
17 may nevertheless grant a hearing.

18 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
19 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation
20 No. 2012-295.

21 8. California Government Code section 11520 states, in pertinent part:

22 (a) If the respondent either fails to file a notice of defense or to appear at the
23 hearing, the agency may take action based upon the respondent's express admissions
24 or upon other evidence and affidavits may be used as evidence without any notice to
25 respondent.

26 9. Pursuant to its authority under Government Code section 11520, the Board finds
27 Respondent is in default. The Board will take action without further hearing and, based on the
28 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
taking official notice of all the investigatory reports, exhibits and statements contained therein on
file at the Board's offices regarding the allegations contained in Accusation No. 2012-295, finds

1 that the charges and allegations in Accusation No. 2012-295, are separately and severally, found
2 to be true and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
5 and Enforcement is \$4,550.50, as of December 8, 2011.

6 **DETERMINATION OF ISSUES**

7 1. Based on the foregoing findings of fact, Respondent Arthur Robert Lavoie has
8 subjected his Registered Nurse License No. 383631 to discipline.

9 2. The agency has jurisdiction to adjudicate this case by default.

10 3. The Board of Registered Nursing is authorized to revoke Respondent's Registered
11 Nurse License based upon the following violations alleged in the Accusation which are supported
12 by the evidence contained in the Default Decision Evidence Packet in this case:

13 a. Under Code section 2761, subdivision (a) for unprofessional conduct in that
14 Respondent was intoxicated while on duty as a registered nurse.

15 b. Under Code section 2762, subdivision (b), in that Respondent used alcohol in a
16 manner dangerous to himself and the public, and to the extent that it impaired his ability to work
17 safely as a registered nurse, when on June 23, 2010, Respondent reported to work intoxicated at
18 El Centro Regional Medical Center and was found asleep when he was supposed to be on duty.

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ORDER

IT IS SO ORDERED that Registered Nurse License No. 383631, heretofore issued to Respondent Arthur Robert Lavoie, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on August 6, 2012.

It is so ORDERED July 6, 2012


FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

80581545.DOC
DOJ Matter ID: SD2011800726

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2012-295

13 **ARTHUR ROBERT LAVOIE**
7805 Reseda Boulevard, Apt. 207
14 Reseda, CA 91335

ACCUSATION

15 Registered Nurse License No. 383631

16 Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
23 Consumer Affairs.

24 2. On or about March 31, 1985, the Board of Registered Nursing issued Registered
25 Nurse License Number 383631 to Arthur Robert Lavoie (Respondent). The Registered Nurse
26 License expired on April 30, 2011, and has not been renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct

7. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

COSTS

8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of

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1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 FIRST CAUSE FOR DISCIPLINE

4 (Unprofessional Conduct - Under the Influence of Alcohol While on Duty)

5 9. Respondent is subject to disciplinary action under Code section 2761(a) for
6 unprofessional conduct in that Respondent was intoxicated while on duty as a registered nurse.

7 The circumstances are as follows:

8 10. On June 23, 2010, Respondent was on duty as a registered nurse at El Centro
9 Regional Medical Center. During Respondent's shift, a co-worker observed Respondent carry a
10 bottle of whiskey into the dialysis unit. A co-worker reported to Respondent's supervisor that
11 Respondent appeared to be intoxicated. Respondent's supervisor went to talk to Respondent and
12 found him asleep at his desk. Respondent's supervisor could smell alcohol on Respondent's
13 person and breath. Once awakened, it was obvious to the supervisor that Respondent was
14 intoxicated. Respondent was belligerent, his speech was loud and slurred, and he had bloodshot
15 eyes. Hospital staff found a bottle of whiskey that was 2/3 empty in Respondent's bag. They
16 also found 48 empty whiskey bottles hidden throughout Respondent's office. El Centro Regional
17 Medical Center terminated Respondent's employment on June 23, 2010.

18 SECOND CAUSE FOR DISCIPLINE

19 (Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)

20 11. Respondent is subject to disciplinary action under Code section 2762(b), in that
21 Respondent used alcohol in a manner dangerous to himself and the public, and to the extent that it
22 impaired his ability to work safely as a registered nurse, when on June 23, 2010, Respondent
23 reported to work intoxicated at El Centro Regional Medical Center and was found asleep when he
24 was supposed to be on duty. The circumstances are more specifically set forth in paragraph 10
25 above, and are incorporated herein by reference as though fully set forth herein.

26 PRAYER

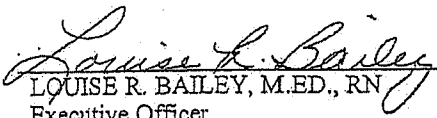
27 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
28 and that following the hearing, the Board of Registered Nursing issue a decision:

1 1. Revoking or suspending Registered Nurse License Number 383631, issued to Arthur
2 Robert Lavoie;

3 2. Ordering Arthur Robert Lavoie to pay the Board of Registered Nursing the reasonable
4 costs of the investigation and enforcement of this case, pursuant to Business and Professions
5 Code section 125.3; and

6 3. Taking such other and further action as deemed necessary and proper.

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8 DATED: November 08, 2011


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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